hands of the marshall, 'till the right to it is fairly decided; and 1792. fo avoid the risque of putting the true owner to a suit, for the

purpole of recovering it back?

For my part, I think that the money should remain in the custody of the law, till the law has adjudged to whom it belongs; and, therefore, I am content, that the injunction iffue.

An Injunction granted.*

HAYBURN'S CASE

HIS was a motion for a mandamus to be directed to the Circuit Court for the district of Pennfylvania, commanding the faid court to proceed in a certain petition of Wm. Hayburn, who had applied to be put on the pension list of the United States, as an invalid pensioner.

The principal case arose upon the act of Congress passed the

29d of March, 1792.

The Attorney General (Randolph) who made the motion for the mandamus, having premifed that it was done ex officio, without an application from any particular person, but with a view to procure the execution of an act of Congress, particularly interesting to a meritorious and unfortunate class of citizens, THE COURT declared that they entertained great doubt upon his right, under fuch circumstances, and in a case of this kind, to proceed ex officio; and directed him to state the principles on which he attempted to support the right. The Attorney General, accordingly, entered into an elaborate description of the powers and duties of his office:-

But THE COURT being divided in opinion on that question,

the motion, made ex officio, was not allowed.

The Attorney General then changed the ground of his interposition, declaring it to be at the instance, and on behalf of Hayburn, a party interested; and he entered into the merits of the case, upon the act of Congress, and the refusal of the Judges to carry it into effect.

THE COURT observed, that they would hold the motion under advisement, until the next term; but no decision was ever pronounced, as the Legislature, at an an intermedi-

ate

^{*} See the lame cale, post. & 3 vol. p. r. as well on a motion to diffolve the Injunction, as on a trial of the merits, upon a feigned issue,

1792. ate fession; provided, in another way, for the relief of the pensioners.†

RULE

† See an act passed the 28th Feb. 1793.—As the reasons assigned by the Judges, for declining to execute the first act of Congress, involve a great Constitutional question, it will not be thought improper

to subjoin them, in illustration of Hayburn's case.

The Circuit court for the district of New-York (consisting of Jar, Chief Justice, Cushing, Justice, and Duane, District Judge) proceeded on the 5th of April, 1791, to take into consideration the act of Congress entitled "An act to provide for the settlement of the claims of widows and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions," and were, thereupon, unanimously, of opinion and agreed.

"That by the Conflitution of the United States, the government thereof is divided into three diffinct and independent branches, and that it is the duty of each to abstain from, and to oppose, encroach-

ments on either.

"That neither the Legislative nor the Executive branches, can conflict tionally assign to the Judicial any duties, but such as are pro-

perly judicial, and to be performed in a judicial manner.

"That the duties affigned to the Circuit courts, by this act, are not of that description, and that the act itself does not appear to contemplate them as such; in as much as it subjects the decisions of these courts, made pursuant to those duties, first to the consideration and sulpension of the Secretary at War, and then to the revision of the Legislature; whereas by the Constitution, neither the Secretary at War, nor any other Executive officer, nor even the Legislature, are authorized to sit as a court of errors on the judicial acts or opinions of this court.

"As, therefore, the business assigned to this court, by the act, is not judicial, nor directed to be performed judicially, the act can only be considered as appointing commissioners for the purposes mentioned in it, by official instead of personal descriptions.

"That the Judges of this court regard themselves as being the commissioners designated by the act, and therefore as being at liberty

to accept or decline that office.

"That as the objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress; and as the Judges desire to manifest, on all proper occasions, and in every proper manner, their high respect for the National Legislature, they will execute this act in the capacity of commissioners.

"That as the Legislature have a right to extend the session of this court for any term, which they may think proper by law to assign, the term of five days, as directed by this act, ought to be punctually

observed.

"That the Judges of this court will, as usual, during the session thereof, adjourn the court from day to day, or other short periods, as circumstances may render proper, and that they will, regularly, between the adjournments, proceed as commissioners to execute the business of this act in the same court room, or chamber."